

claims 17-22, 26-29 were noted as allowable if rewritten to overcome rejections under 35 USC 112.

Reconsideration of these objections and rejections is respectfully requested in view of the above identified amendments and these remarks.

Claims 17-46 are now pending.

The previous telephone election of claims 17-29 is hereby confirmed. Although the telephone election was made with transverse, such traverse is hereby waived. Claims 1-16 have been canceled.

A new title having wording similar to that proposed by the examiner has been proposed.

It is respectfully requested that the objection to the specification be withdrawn. The claim language in question is "pumpkin, fruit or vegetable," as recited in independent claims 17, 23 and 28, and the assertion is that this language is not in the specification. The examiner's attention is respectfully directed to the specification at page 19, line 4, where the language appears "pumpkins and other similar fruits or vegetables." This is essentially the same language as used in the claims, and therefore the specification contains an antecedent basis for the terminology used in the claims.

Reconsideration of the indefiniteness rejection of claims 17-29 under Section 112 is respectfully requested. The indefiniteness rejection is based on the alternative use of the language "pumpkin, fruit or vegetable" which appears in independent claims 17, 23 and 28. Alternative expressions are permitted in claims, and are authorized under MPEP 2173.05(j)II. It is clear from the specification and from the claims that the claims refer to one of a pumpkin, fruit or vegetable upon which the invention is practiced.

In view of the specification having an antecedent basis for terminology used in the claims, and the acceptable use of an alternative expression in the claims, it is respectfully submitted that claims 17-22, 28 and 29 are in condition for allowance. Such action is respectfully requested. The Examiner has previously noted that these claims contain allowable subject matter.

Claims 26 and 27 have each been amended into independent form, by incorporating therein the subject matter from claim 23. Accordingly, claims 26 and 27 are now believed to be allowable, in accordance with the Examiner's notation allowable subject matter.

Reconsideration of the anticipation rejection of claims 23-25 under Section 102 is respectfully requested. The anticipation rejection on Nauman (4,296,659) is based on the argument that the hammer and block of wood described in Nauman constitutes a striking tool. Claim 23 has been amended in the manner set forth to more clearly distinguish from Nauman.

Amended claim 23 recites that the contact surface is an integral part of the striking tool. In the manner set forth more specifically in claim 23, the striking tool and the contact surface move from a position spaced from the striking edge of the die element into contact with the striking element in order to create each strike and each impact force that drives the die element into the shell. Thus, claim 23 has been amended to distinguish from the situation described in Nauman where the block of wood remains stationary while the hammer is moved. Claims 24 and 25 should likewise patentably distinguish from Nauman. No new matter has been introduced into the amendment of claim 23, because the concept of moving the striking element from a position spaced from the die element into contact with the die element is described in the specification at page 6, lines 11-13; page 8, lines 8-10; page 13, lines 1-3; and throughout page 17, among other places.

The subject matter of amended claim 23, and of the other pending claims, is also not obvious from Nauman. The claimed subject matter is instrumental in resolving the problems and avoiding the difficulties of Nauman, as described in the present application at page 2, line 8 through page 3, line 16.

New claims 30-32 depend directly or indirectly on amended claim 23. New claims 30-32 contain subject matter similar to original claims 17, 18 and 21, respectively. New claims 30-32 should be allowable in conjunction with amended claim 27.

New claims 33-38 depend directly or indirectly on amended claim 26. New claims 33-38 contain subject matter similar to or derived from original claims 17, 18, 24, 25 and 22. New claims 33-38 should be allowable in conjunction with amended claim 26.

New claims 39-44 depend directly or indirectly on amended claim 27. New claims 39-44 contain subject matter similar to original claims 18, 21, 22, 24 and 25. New claims 39-44 should be allowable in conjunction with amended claim 27.

New claims 45 and 46 depend directly or indirectly on claim 28. New claims 45 and 46 contain subject matter similar to original claims 24 and 25. New claims 45 and 46 should be allowable in conjunction with claim 28.

In view of the amendments and remarks above, it is believed that all pending claims now define patentable subject matter, and the application is in condition for allowance. If not, the Examiner is encouraged to telephone the undersigned for the purpose of resolving any additional issues that might inhibit the immediate allowance of this application.

Respectfully submitted,

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